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15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

19 ROSEMARY D'AUGUSTA *et al.*

CASE NO: CV 08-3007 VRW

20 Plaintiffs,

21 v.

22 NORTHWEST AIRLINES CORPORATION
 23 and DELTA AIR LINES INC.,

24 Defendants.

**PLAINTIFFS' EX PARTE
 APPLICATION FOR AN ORDER
 SHORTENING TIME;
 DECLARATION OF THOMAS
 PAUL PIER**

Date: To Be Determined
 Time: To Be Determined
 Judge: Hon. Vaughn R. Walker
 Courtroom 6

1 TO: THIS HONORABLE COURT AND DEFENDANTS ABOVE NAMED:
2

3 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

4 This ex parte application for an order shortening time is made pursuant to Local Civil
5 Rules 7-2(a) and 7-10 that allow the assigned Judge to set the time for the hearing of
6 motions. Plaintiffs move ex parte for an order shortening time to hear their Motion To Set
7 Hearing Date to Establish Briefing Schedule and Hearing Date for Plaintiffs' Motion for
8 Preliminary Injunction. Plaintiffs request that the Court schedule the hearing on the Court's
9 Law and Motion Calendar at a time as soon as is convenient to the Court.
10

11 Plaintiffs move for an ex parte order shortening time for the following reasons:

12 1. This action is brought under the United States antitrust laws against defendant
13 airlines, seeking temporary and permanent injunctive relief from the proposed merger of the
14 two companies. As appears more fully in the Motion To Set Hearing Date to Establish
15 Briefing Schedule and Hearing Date for Plaintiffs' Motion for Preliminary Injunction,
16 defendants are moving rapidly to consummate their proposed merger within the next six
17 months. The merger of the two defendant airlines is already lessening competition, causing
18 plaintiffs harm in the form of lowered flight capacity, increased fees, and increased prices.
19

20 2. If the regular schedule for motions is followed, it may be months before plaintiffs'
21 motion for preliminary injunction may be heard. By that time, it is likely that much of the
22 integration of the two airlines will be complete.

23 Counsel for defendants has yet to appear; accordingly, plaintiffs have been unable to
24 communicate with them for the purpose of obtaining their stipulation to plaintiffs' motion.
25 Plaintiffs have notified defendants of this application and the related motion by service of
26 process on their local agent.
27

This ex parte application is based on this application and the supporting Declaration of Thomas Paul Pier, the Motion To Set Hearing Date to Establish Briefing Schedule and Hearing Date for Plaintiffs' Motion for Preliminary Injunction, and on the papers, pleadings and records on file herein and on such other further matters as may be offered.

A proposed Order is submitted herewith.

Dated: July 14, 2008

Respectfully submitted,

ALIOTO LAW FIRM
GRAY PLANT MOOTY & BENNETT, P.A.

By:

~~Thomas Paul Pier~~
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**DECLARATION OF THOMAS PAUL PIER IN SUPPORT OF EX PARTE
APPLICATION FOR ORDER SHORTENING TIME**

I, Thomas Paul Pier, declare as follows:

1. The detailed reasons for the request to shorten time are set forth in detail in Plaintiffs' Motion to Set Hearing Date to Establish Briefing Schedule and Hearing for Plaintiffs' Motion for Preliminary Injunction and will only be summarized briefly here. The matters stated herein are based on my personal knowledge and I am competent to testify thereto.

1 2. In April 2008 defendants Northwest and Delta announced their intention to
2 combine their two airlines by the end of 2008, a mere six months from now. Defendants
3 have moved rapidly to meet this goal, recently establishing some 25 "integration teams" to
4 speed the combination. Additionally, defendants have expressed their hope that the
5 Department of Justice will issue its decision before the new administration takes over in
6 January 2009. Finally, the cooperation of the two airlines' pilot unions- once thought to be a
7 major impediment to a rapid closure of the deal- has all but disappeared.
8

9 3. The anticipated merger of the two airlines has already reduced competition in
10 the marketplace, resulting in higher airfares, reduced capacity, and increased fees.

11 4. If the regular schedule for motions is followed, it may be months before
12 plaintiffs' motion for preliminary injunction may be heard. By that time, it is likely that
13 much of the integration of the two airlines will be complete, causing further harm to
14 plaintiffs.
15

16 5. As of the filing date of this motion, defendants have not made an appearance
17 of counsel and plaintiffs are thus unable to obtain their stipulation to the motion to shorten
18 time.
19

20 6. The Motion for which plaintiffs request a shortening of time asks this Court to
21 set a hearing at the nearest time that is convenient to the Court for the purpose of setting a
22 briefing schedule and hearing date for plaintiffs' motion for preliminary injunction.
23

24 7. There have been no previous time modifications in this case.
25

26 8. The requested time modification would have the effect of accelerating the
27 schedule such that plaintiffs may present their case prior to the time that much of the
28 defendants' merger is completed.
29

1 I declare, under penalty of perjury and the laws of the State of California, that the
2 foregoing is true and correct.
3
4

5 Executed this 14th day of July 2008, at San Francisco, California.
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Thomas Paul Pier

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROSEMARY D'AUGUSTA *et al.*

CASE NO: CV 08-3007 VRW

Plaintiffs,

V_e

**[PROPOSED] ORDER
SHORTENING TIME**

NORTHWEST AIRLINES CORPORATION
and DELTA AIR LINES INC.,

Date: To Be Determined
Time: To Be Determined
Judge: Hon. Vaughn R. Walker
Courtroom 6

Defendants.

Plaintiffs above named, having moved ex parte for an order shortening time to hear Plaintiffs' Motion To Set Hearing Date to Establish Briefing Schedule and Hearing Date for

1 Plaintiffs' Motion for Preliminary Injunction; the ex parte application to shorten time having
2 been considered by the Court; and the Court being of the opinion that the ex parte
3 application should be granted,

4 IT IS HEREBY ORDERED that the plaintiffs' ex parte application is granted and the
5 above referenced motion shall be heard by this Court at _____.m. on _____, 2008; that
6 defendants' opposition, if any, shall be filed and served by _____; and that the reply,
7 if any, shall be filed and served by _____.

9
10 Dated: July ____, 2008

12 _____
13 Vaughn R. Walker
United States District Chief Judge

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